

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 861 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ANJUBEN W/O SAMIR H PATEL

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

1. Special Criminal Application No. 861 of 2003
MR. VD MEWADA for Petitioner No. 1
MS PAURAMI SHETH Ld. APP for respondents

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/02/2004

ORAL JUDGEMENT

1. Heard Mr.V.D.Mewada, learned advocate for the
petitioner and Ms.Paurami Sheth, learned APP for the
respondents.

2. In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the externment order dated 16.6.2003 (Annexure-A) passed under Section 56 of the Bombay Police Act (hereinafter referred to as "the Act") by respondent no.1 - Deputy Commissioner of Police, Zone -5, Ahmedabad, externing the petitioner from Ahmedabad and contiguous districts of Ahmedabad (Rural), Kheda, Mahesana.

3. On 9.12.2002, show cause notice (Annexure-B) came to be served on the petitioner under Section 56 of the Act by respondent no.1 - Deputy Commissioner of Police, Zone-5, Ahmedabad. That the petitioner appeared before the respondent in response to the show cause notice. By the impugned order (Annexure-A), the petitioner has been externed for a period of 2 years from the Ahmedabad city as well as contiguous districts pointed out above.

4. It is submitted by Mr.Mewada, learned advocate for the petitioner that the impugned order does not comply with the requirement of Section 56(B) of the Act inasmuch as there is no subjective satisfaction recorded by the Externing Authority vis-a-vis the other persons, as laid down by the Division Bench of this Court in Special Criminal Application No.1302 of 1992.

In Para.2 of the order passed in Special Criminal Application No.1303 of 1992 (copy placed on record), it has been observed by the Division Bench while dealing with the case of externment under Section 56(B) of the Act that, "In the impugned order of externment the Sub-Divisional Magistrate has stated that the victims of the incidents are not willing to come forward to depose against the petitioner because of his fear. Under Section 56 of the Bombay Police Act the externing authority must form a subjective opinion that witnesses are not willing to come forward to give evidence in public against the person sought to be externed by reason of apprehension on their part as regards the safety of their persons or property. This requirement is not clearly satisfied in the present case. It is clear that the opinion formed by the Sub-Divisional Magistrate is only as regards the witnesses, who are the victims of the said incident and not other witnesses. This opinion would clearly not be the requisite opinion contemplated by the mandatory requirement of Section 56. Therefore, the impugned order of externment passed by the Sub-Divisional Magistrate, Palitana at Annexure-B and the impugned order passed by the State Government at Annexure-C would be illegal. We are supported in our

view by the unreported judgment of this Court in Special Criminal Application No.18 of 1969, relevant portion of which is reproduced in the case of Navabkhan Vs. State of Gujarat, reported in AIR 1974 SC 1471 at Page-1474 Para.5."

5. It is not disputed that the statements recorded for reaching the subjective satisfaction for the purpose of passing the impugned order are of the victims and no statements of any other person, other than the victim have, been recorded for reaching the subjective satisfaction by the Externment authority. It has been clearly laid down in the abovereferred judgment of the Division Bench of this Court that mandatory requirement of Section 56(b) of the Act requires not only the subjective satisfaction as regards the victims but the subjective satisfaction as regards the other persons also.

6. In the instant case, the subjective satisfaction recorded by the respondent is only as regards the witnesses who are the victims of the incident and there is no subjective satisfaction reached as regards the other persons i.e. other than the victims of the petitioner.

7. In my opinion, the present case is squarely covered by the decision of the Division Bench rendered in Special Criminal Application No.1303 of 1992 and therefore, the petition will have to be allowed by quashing and setting aside the impugned order of externment (Annexure-A) dated 16.6.2003.

8. In view of the above, this petition is granted and accordingly allowed. The impugned order of externment (Annexure-A) dated 16.6.2003 passed by respondent - Deputy Commissioner of Police, Zone -5, Ahmedabad is hereby quashed and set aside. Rule made absolute. Direct service is permitted.

(N.G.Nandi, J.)

(vipul)